



CONTRACT LAW DIVISION

Office of the Assistant General Counsel for Finance & Litigation



Biweekly Report - Period Ending January 20, 1996

Ellsworth Assocs. Suit for Injunctive Relief

Ellsworth Associates, a former § 8(a) contractor, has filed for a preliminary injunction before US District Court Judge Richie to prevent the Department from awarding the successor contract within the § 8(a) program. Citing *Adarand*, Ellsworth contends that the requirement should not be filled under the § 8(a) program and that it should be eligible to compete. Until recently, Ellsworth had pursued merger talks with Nang Int'l., Ltd., the prospective successor § 8(a) contractor. Justice has requested us to agree to delay contract award until the end of June to permit US District Court Judge Sullivan to decide another *Adarand* suit contesting the validity of the § 8(a) program. DOJ hopes that Judge Sullivan's decision will uphold the program and present a persuasive opinion which will influence the outcome of the Ellsworth suit. We have worked with NOAA to accommodate the DOJ litigation strategy. Mark Langstein has the matter.

Marine Research Specialists v. DOC—

GAO has sustained Marine Research Specialists' protest, GAO No. B-265869.1, of NOAA's procurement of services relating to survey of marine recreational fish-

ing. GAO has recommended that NOAA establish a new closing date for submission of proposals to allow MRS to compete for the procurement. Fred Kopatich had the matter.

Garza v. DOC—GSBCA 13332-COM

In this construction delay case, Jeff Hughes conducted depositions from December 14-15 in Fresno, California. The Contracting Officer made a settlement offer for \$14,000 (half the liquidated damages assessed and the probable cost of trying the case in San Francisco), but Garza indicated that it would only settle in the \$50-80,000 range. Agreement is unlikely. The judge has re-scheduled the hearing for February 27 to March 1, 1996.

Appeal of GraphicData—GPO BCA No. 35-94

Due to the Government shutdown, the Government was unable to respond to Appellant's Motion for Summary Judgment or file its own cross-motion in this appeal alleging defective estimates on a patent duplication requirements contract. As a result, hearing in this appeal has been delayed 2 1/2 months to May 7, 1996, and the Government's evaluation of potential entitlement and quantum for settlement purposes has also been delayed. Mark Langstein has the matter for PTO.

AWIPS

This week, Roxie Jones attended the third Formal Progress Review provided by PRC. Contract performance continued during the Government shutdown. The Government program staff predicts schedule delays and increased costs due to budget-related, postponed purchase decisions.

Unisys Corp. v. Dept. of Commerce

The government shutdown/furlough and subsequent blizzard have left the litigation schedule pretty much in a shambles. Terry Lee and Steve Carrara have had to postpone and intend to re-schedule all depositions scheduled for January 1996, both offensive and defensive. More likely than not, the depositions scheduled for February 1996 will also have to be postponed because of the need to re-schedule the January depositions. have the case.

Contract Law Division on the WEB

Division bi-weekly reports, past issues of *A Lawyer's View* and other procurement related documents are now available on our Internet Web site. The site is still under construction, but clients are welcome to take a look. Point your web browser to <http://sage.ogc.doc.gov> and follow the links to the Contract Law Division.

Actions Completed/Received during Period

	From 1/7/96	To 1/20/96
	Received	Completed
ITA	1	0
NIST	1	1
NOAA	8	9
O/S	0	0
PTO	1	0
Total	11	10

Contract Law Division—Client Workload Period Ending 01/20/96

